

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Investigation of
Issues Governed by *Minnesota Statutes*,
Section 216A.036

ISSUE DATE: November 2, 2005

DOCKET NO. P-5643, 426/CI-04-1790

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

PROCEDURAL HISTORY

On June 3, 2004, the Commission received an anonymous e-mail suggesting that the employment of Former Commissioner Greg Scott by Integra Telecom violated provisions of Minn. Stat. § 216A.036 prohibiting rate-regulated companies and their affiliates from employing former Commissioners for one year from their departure from the Commission. Former Commissioner Scott had resigned from the Commission effective May 18, 2004; he had announced that he would begin employment with Integra on June 15, 2004.

On June 4, 2004, the e-mail writer forwarded the e-mail to Chief Deputy Attorney General Kristine L. Eiden, suggesting that the Attorney General's Office investigate the matter.

On June 9, 2004, the Commission made a formal written request to the Office of the Attorney General, asking that it investigate the matter to determine whether Minn. Stat. § 216A.036 had been violated and whether any formal action was required. On June 21, 2004, the Office of the Attorney General responded by letter stating that Minn. Stat. § 216A.036 did not authorize the Attorney General to investigate alleged violations of the statute, only to take legal action to collect any penalties assessed by the Commission.

On June 30, 2004, the Commission made a formal written request to the Commissioner of Employee Relations for an independent counsel to investigate the matter. The Commissioner of Employee Relations entered into a contract with John E. Drawz, an attorney in the law firm of Fredrikson & Byron, P.A., to conduct the investigation.

On June 3, 2005, the Commission received Mr. Drawz's report from the Department of Employee Relations. After receiving comments from Integra Telecom and Former Commissioner Scott, the Commission made the report public and requested comments from interested persons.

The following persons filed comments: Former Commissioner Scott, Integra Telecom, Qwest Corporation, Attorney David A. Schultz, the Minnesota Department of Commerce, and AT&T Communications of the Midwest, Inc.

On October 7, 2005, the Commission met to consider the Report of Investigation submitted by Independent Counsel Drawz. Having examined the entire record, including all comments filed by interested persons, the Commission makes the following findings, conclusions, and Order.

FINDINGS AND CONCLUSIONS

I. Factual Background

The central facts in this case are uncontested and are summarized below. Full factual findings are set forth in the appendix.

A. Integra Telecom and Scott-Rice Telephone Company

Integra is a telecommunications company headquartered in Portland, Oregon, providing voice, data, and internet services in Oregon, Washington, Minnesota, North Dakota, and Utah. In Minnesota, it holds certificates of authority to provide local exchange service and interexchange service.

It provides interexchange service and most of its local exchange service as a “telecommunications carrier” under Minn. Stat. § 237.01, subd. 6. The rates of telecommunications carriers are generally exempt from Commission regulation. Minn. Rules, part 7811.2210, subp. 8; Minn. Rules 7812.2210, subp. 8.

Integra also owns a small incumbent local exchange carrier, Scott-Rice Telephone Company, which provides local exchange service in the southern Twin Cities metropolitan area. Scott-Rice is a both an “independent telephone company” under Minn. Stat. § 237.01, subd. 3 and a “small telephone company” under Minn. Stat. § 237.773, subd. 1.

The rates of independent telephone companies and small telephone companies must be filed with the Department of Commerce and the Commission¹ and are subject to Commission review and revision under specified circumstances.²

Finally, both Integra and Scott-Rice were parties to ongoing Commission proceedings during all times relevant to this case. See Findings 59 through 61.6, Appendix.

B. Employment Discussions Between Integra and Former Commissioner Scott

On April 13, 2004, Commissioner Greg Scott made a telephone call to Dudley Slater, CEO of Integra Telecom. During this call, Commissioner Scott inquired about employment opportunities with Integra and stated that he would be willing to resign from the Commission before the expiration of his term in December if the right opportunity presented itself. The same day, Commissioner Scott e-mailed his resume to Mr. Slater.

¹ Minn. Stat. § 237.07.

² Minn. Stat. § 237.081; Minn. Stat. § 237.773.

On April 16, 2004, Mr. Slater and Commissioner Scott had a general discussion by telephone regarding Integra's plans for the future management of its regulatory affairs and the possibility that Commissioner Scott might fit with Integra's regulatory leadership needs as it moved forward. Mr. Slater invited Commissioner Scott to visit company headquarters in Portland, Oregon to meet Integra's key leadership and to further explore a possible role for Commissioner Scott in the Integra organization.

Since Integra was subject to regulation by the Commission and a party to active Commission proceedings, both Integra and Commissioner Scott considered themselves restricted in their employment discussions. Integra sought an opinion from outside legal counsel and Commissioner Scott conducted his own legal research.

Integra's outside counsel advised the Company that discussing employment with Commissioner Scott, and paying his travel and lodging expenses for an in-person interview, were permissible as long as they did not discuss "future benefits or compensation" and did not discuss current Commission proceedings to which Integra was a party. It was his opinion that neither Integra nor Scott-Rice were "subject to rate regulation by the Commission" under Minn. Stat. § 216A.036.

On May 4, 2004, Commissioner Scott flew to Portland, Oregon and interviewed with key Integra personnel. On May 6, the Company issued a check for \$706.23 to Commissioner Scott as expense reimbursement.

On May 7, 2004, Commissioner Scott and Mr. Slater had a 29-minute, post-interview telephone conversation about corporate culture at Integra and living in Portland, Oregon. On May 9, Commissioner Scott informed Mr. Slater that he intended to resign from the Commission, which he did by letter to the Governor, dated May 11 and effective May 18 at the end of the day.

On May 12, Integra's General Counsel provided Mr. Slater with a memorandum regarding the separation of legal functions from regulatory functions at Integra. The memo listed its subject as "Transfer of All Regulatory Activity to Greg Scott" and contained a "list of regulatory functions which will be assumed by Greg Scott and his department." On May 17, Mr. Slater faxed the memo to Commissioner Scott under the subject heading "scope of job."

On May 18, the day Commissioner Scott's resignation became effective at day's end, Commissioner Scott and Mr. Slater negotiated all terms of Commissioner Scott's employment with Integra, including compensation and benefits. Both Former Commissioner Scott and Mr. Slater state that compensation and benefits were never discussed before that day and that there was no previous offer or acceptance of employment.

Former Commissioner Scott began his employment with Integra on June 16, 2004. His employment with Integra ended on August 23, 2005.

II. Summary of the Issues

The e-mail prompting this Commission investigation claimed that Former Commissioner Scott's employment by Integra violated the one-year employment restriction set forth at Minn. Stat. § 216A.036:

216A.036 Employment restrictions; civil penalty.

(a) A person who serves as (1) a commissioner of the Public Utilities Commission, (2) commissioner of commerce, or (3) deputy commissioner of commerce, shall not, while employed with or within one year after leaving the commission or department, accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with an entity, or an affiliated company of an entity, that is subject to rate regulation by the commission.

(b) An entity or an affiliated company of an entity that is subject to rate regulation by the commission, or a person acting on behalf of the entity, shall not negotiate or offer to employ or compensate a commissioner of the Public Utilities Commission, the commissioner of commerce, or the deputy commissioner of commerce, while the person is so employed or within one year after the person leaves that employment.

(c) For the purposes of this section, "affiliated company" means a company that controls, is controlled by, or is under common control with an entity subject to rate regulation by the commission.

(d) A person who violates this section is subject to a civil penalty not to exceed \$10,000 for each violation. The attorney general may bring an action in district court to collect the penalties provided in this section.

The issue in this case is whether the course of conduct between Former Commissioner Scott and Integra violated Minn. Stat. § 216A.036, set forth above, or any of the other statutes and rules governing the conduct of Commissioners —

- Minn. Stat. § 216A.035, prohibiting the receipt of income from entities subject to regulation by the Commission.
- Minn. Rules, part 7845.0300, requiring Commissioners to maintain high standards of conduct to prevent conflicts between private interests and official duties or the appearance of such conflicts.
- Minn. Rules, part 7845.0400, requiring Commissioners to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Commission and to avoid any action that might result in a conflict of interest or the appearance of impropriety.
- Minn. Rules, part 7845.0700, prohibiting receipt from a party to a proceeding of any thing of monetary value exceeding nominal value.
- Minn. Rules, part 7845.0800, codifying the one-year employment restriction of

Minn. Stat. § 216A.036, prohibiting communications with parties regarding past or future benefits or compensation, and requiring disclosure within 48 hours of any communication with a party regarding past or future benefits or compensation.

III. Positions of the Parties

Former Commissioner Scott and Integra Telecom argued that the one-year employment prohibition set forth at Minn. Stat. § 216A.036 did not apply to this case, denied that any impropriety had occurred, and emphasized that Integra had acted on the advice of counsel throughout its employment discussions with Former Commissioner Scott.

The Minnesota Department of Commerce and Attorney David A. Schultz argued that the conduct of Integra and Former Commissioner Scott violated Minn. Stat. §§ 216A.035, 216A.036, 216A.037, and Minnesota Rules, parts 7845.0300, 7845.0400, 7845.0700, 7845.0800, and 7845.7200.

Qwest Corporation filed comments urging the Commission to investigate ex parte communications between Former Commissioner Scott and former regulatory counsel for AT&T Communications of the Midwest, Inc., which came to light in the course of Mr. Drawz's investigation. AT&T filed comments opposing an investigation of those contacts. The Commission opened a separate docket for consideration of those issues and solicited comments from potentially interested parties.³

IV. Summary of Commission Action

The Commission finds that Scott-Rice Telephone Company is an "entity subject to rate regulation by the commission" within the meaning of Minn. Stat. § 216A.036 (a), that Integra Telecom is an "affiliated company" of Scott-Rice within the meaning of Minn. Stat. § 216A.036 (c), and that Integra and Former Commissioner Scott therefore violated the statute by the offer and acceptance of employment within one year of Former Commissioner Scott's leaving the Commission.

The Commission will assess a penalty of \$2,500 against Former Commissioner Scott. The Commission will refrain from assessing a penalty against Integra because the costs of this proceeding, which it has borne and will continue to bear, significantly exceed the statutory penalty.

The Commission finds that Former Commissioner Scott's conduct in initiating, conducting, and failing to disclose employment negotiations with Integra while serving as a Commissioner violated the Commission's Code of Conduct, specifically Minnesota Rules 7845.0400 and 7845.0300, and that his failure to disclose these communications violated Minnesota Rules 7845.0800, subp. 2.

The Commission finds that Former Commissioner Scott's conduct in seeking \$706.23 in reimbursement for travel expenses from Integra violated Minnesota Rules 7845.0700, subp. 1 and that his acceptance of this reimbursement violated Minn. Stat. § 216A.035 (a).

³ *In the Matter of the Commission Inquiry Regarding Potential Proscribed Ex Parte Contacts Regarding Commissioner Scott*, Docket No. P-999/CI-05-1419.

These actions will be explained below.

V. The Offering and Acceptance of Employment with Integra Violated Minn. Stat. § 216A.036.

A. Introduction

Minn. Stat. § 216A.036 prohibits Commissioners, entities “subject to rate regulation by the commission,” and affiliates of such entities from negotiating or entering into employment agreements for one year from the date a Commissioner leaves the Commission. In this case, Integra and Former Commissioner Scott both came to the conclusion that neither Integra nor Scott-Rice was “subject to rate regulation by the commission” and that it was therefore permissible for them to engage in employment discussions.

The Commission disagrees. A careful examination of the statutes governing the operation of Scott-Rice Telephone Company demonstrates that the company is subject to rate regulation by the Commission.

Scott-Rice was originally an “independent telephone company” under Minn. Stat. § 237.01, subd. 3. It has elected, at least for the present, to be regulated as a “small telephone company” under Minn. Stat. § 237.773, subd. 1. It may revoke this election and return to independent telephone company status after three years if it chooses.⁴ Both types of telephone companies are subject to rate regulation by the Commission, but under different regulatory paradigms.

B. Independent Telephone Companies

“Independent telephone company” is a regulatory category made up of incumbent telephone companies that provide local exchange service to fewer than 30,000 subscribers within the state. Independent telephone companies are not required to follow the complex rate change procedures that apply to larger telephone companies under Minn. Stat. § 237.075.⁵ They are required, however, to file their rates with the Commission and the Department of Commerce,⁶ and the Commission is authorized to review and change their rates on its own motion or on complaint. Minn. Stat. § 237.081.

This rate change authority is by no means a dead letter; it is just an efficient and economical alternative to the procedurally elaborate rate change procedures that apply to large companies. The Department of Commerce emphasizes this in its comments, pointing to a comprehensive rate change proceeding undertaken in regard to another independent telephone company to illustrate the point.⁷

⁴ Minn. Stat. § 237.773, subd. 2.

⁵ Minn. Stat. § 237.075, subd. 9.

⁶ Minn. Stat. § 237.07.

⁷ *In the Matter of the Petitions of Customers in the Big Lake and Zimmerman Exchanges for an Investigation of the Rates Charged by Connections, Etc. for Toll-Free Calling to the Minneapolis/St. Paul Toll-Free Calling Area*, Docket No. P-404, 407, 520, 405, 413, 426, 427, 430, 421/CI-00-712, Order Opening Rate and Earnings Investigation and Requiring Temporary Rate Reductions (April 11, 2001).

Even more to the point, perhaps, are two cases in which the Commission reviewed and changed Scott-Rice's rates, while it was still operating under the independent telephone company statute. In one case, the Commission rejected and reduced Scott-Rice's proposed rate for CLASS call tracing services.⁸ In the other, the Commission rejected and reduced Extended Area Service rates proposed by Scott-Rice.⁹

Clearly, independent telephone companies are subject to rate regulation by the Commission.

C. Small Telephone Companies

"Small telephone company" is a regulatory category made up of telephone companies that have fewer than 50,000 in-state subscribers and have elected, under Minn. Stat. § 237.773, to operate under an alternative regulation plan as described in Minn. Stat. §§ 237.76 through 237.775. The rates of small telephone companies, like those of independent telephone companies, must be filed with the Commission and the Department of Commerce;¹⁰ those rates, however, are subject to Commission review and revision under a different regulatory paradigm than the rates of independent telephone companies that have not elected small telephone company status.

In brief, small companies' rates for price-regulated services (essentially, basic services) are frozen for two years, after which the small company may change them, subject to Commission review and revision in the event of a complaint.¹¹ The rates for other services (except switched access services) may be changed at any time, subject to the Commission's authority to review and revise them on its own motion or on complaint.¹² Rates for switched access service may not be changed without prior Commission approval.¹³

⁸ *In the Matter of a Proposal by Scott-Rice Telephone Company to Offer CLASS Services*, Docket No. P-426/M-94-655, Order Authorizing Class Services (November 29, 1994).

⁹ *In the Matter of a Petition for Extended Area Service from the Webster Exchange to Minneapolis/St. Paul Metropolitan Calling Area*, Docket No. P-426, 405, 421, 430, 520/CP-91-821, Order Approving a Lower-Priced Alternative and Adopting Rates for Polling (December 7, 1994).

¹⁰ Minn. Stat. § 237.07.

¹¹ Minn. Stat. § 237.773, subd. 3.

¹² Minn. Stat. § 237.773, subd. 2, referencing and incorporating the provisions of Minn. Stat. § 237.761, subd. 4.

¹³ Minn. Stat. § 237.773, subd. 4; Minn. Stat. § 237.773, subd. 3 (b).

Further, the statute creating the “small telephone company” category provides that local “*rates established by the Commission*” under its provisions cannot be increased for one year following their implementation.¹⁴ Given this explicit reference to the Commission’s authority to establish rates, and the clear rate-review and rate-changing authority granted at other points in the statute, it would be anomalous to conclude that small telephone companies, including Scott-Rice, are not “subject to rate regulation by the Commission.”

D. The Legislative History of Minn. Stat. § 216A.036

As discussed above, careful examination of the statutes delineating the Commission’s authority over independent and small telephone companies demonstrates that their rates are subject to regulation by the Commission. Nevertheless, Minn. Stat. § 216A.036 is complicated enough to have sent readers to the legislative history, which is ambiguous enough to have cast doubt on its meaning.

The legal opinion relied upon by Integra points to remarks made to a legislative committee by a Department of Public Service¹⁵ legislative liaison as evidence of statutory ambiguity. At two points, these remarks state that certain telephone companies are not subject to rate regulation by the Commission:

. . . the term rate regulation would effectively exclude small telephone companies, the rural telephone companies, municipal power companies and telephone companies, as well as all of the co-ops except . . . Dakota County. *Unofficial Transcript*, STATE OF MINNESOTA HOUSE REGULATED INDUSTRIES COMMITTEE (February 24, 1986).

There are two types of regulation which we have, rate regulation and just regulation. Rate regulation applies to major companies in the State. Service regulation applies to . . . for example phone companies with less than 15,000 customers, and that just covers services and that sort of thing. . . . A co-op, for example, does not have the same type of rate regulation as, for example, as NSP does. *Id.*

The inclusion of the telephone companies in these remarks appears to have been inadvertent. It is not correct that any of the telephone companies referenced in these remarks were or are subject to service-only regulation. Service-only regulation occurs on the energy side of the Commission’s docket, where the Public Utilities Act exempts municipal and cooperative utilities from rate

¹⁴ Minn. Stat. § 237.773, subd. 3 (c), emphasis added.

¹⁵ The Department of Public Service is now the Department of Commerce.

regulation, explicitly finding that they are already effectively regulated by their residents and members.¹⁶ There is no similar finding – and no similar exemption from rate regulation – in the Telecommunications Act.

When § 216A.036 was enacted, the Telecommunications Act exempted independent, municipal, and cooperative telephone companies from the cumbersome, rate-of-return, rate regulation applicable to large carriers under Minn. Stat. § 237.075.¹⁷ These companies remained subject to comprehensive rate regulation, however, on complaint and on the Commission’s own motion, under Minn. Stat. § 237.081.

More than a decade later, all telephone companies – of all sorts and all sizes – were given the option of choosing alternative regulation plans under Minn. Stat. §§ 237.76 through 237.775. Different plans were applicable to companies of different sizes. All plans, however, included and continue to include significant Commission authority over rates.

The Commission cannot interpret Minn. Stat. § 216A.036 to give effect to an inadvertent mischaracterization of the Commission’s authority over small-sized telephone companies by a non-legislator at a single hearing, when that interpretation would conflict with the plain meaning of the words of the statute. This is especially true in the absence of affirmative evidence that legislators intended to incorporate the inadvertent mischaracterization into the statute.

Here there is no such evidence. There are no statements by legislators evincing an intention to exempt any particular size or type of telephone company from the operation of Minn. Stat. § 216A.036. To the contrary, the legislators’ focus was on companies’ *rate-regulatory* status, not on their size, their ownership model, or the type of service they provided.

And finally, it is important not to lose sight of the principle that legislative history is relevant only when required to resolve ambiguity; an otherwise clear statute cannot be rendered ambiguous by its legislative history.¹⁸ In this case, the confusion and ambiguity surrounding the statute stem largely from the legislative history, not from the statute itself.

E. Conclusion

By its terms, the statute requires the Commission to determine whether Scott-Rice is “subject to rate regulation by the Commission.” This determination turns on the rate-regulation provisions of the Telecommunications Act, which are examined above and which demonstrate that Scott-Rice *is* subject to rate regulation.

For all these reasons, the Commission concludes that Scott-Rice is “subject to rate regulation by

¹⁶ Minn. Stat. § 216B.01.

¹⁷ Minn. Stat. § 237.075, subd. 9.

¹⁸ Minn. Stat. § 645.16.

the Commission” within the meaning of Minn. Stat. § 216A.036 and that Former Commissioner Scott’s employment by Integra violated that statute. In assessing penalties, however, the Commission will take into account the difficulties in interpretation that the statute presents.

VI. Former Commissioner Scott’s Conduct in Seeking and Accepting Reimbursement for Travel Expenses Violated Minn. Stat. § 216A.035 (a) and Minnesota Rules 7845.0700, subpart 1.

As part of Former Commissioner Scott’s employment discussions with Integra, he traveled to corporate headquarters in Portland, Oregon for an interview with key corporate decisionmakers. He requested and received reimbursement from Integra in the amount of \$706.23.

Minn. Stat. § 216A.035 (a) bars Commissioners from receiving “any income,” directly or indirectly, from any entity subject to Commission regulation. Here the prohibition is not limited to companies subject to *rate* regulation:

(a) No person, while a member of the Public Utilities Commission, while acting as executive secretary of the commission, or while employed in a professional capacity by the commission, shall receive any income, other than dividends or other earnings from a mutual fund or trust if these earnings do not constitute a significant portion of the person's income, directly or indirectly from any public utility or other organization subject to regulation by the commission.

Integra and Commissioner Scott concluded that the travel expense reimbursement was not “income” under the statute, mainly because it was not taxable under state and federal tax statutes. The Commission disagrees.

The standard is not taxability. Many forms of income – gifts, for example – are not taxable; the statute nevertheless prohibits their receipt, directly or indirectly, by Commissioners from regulated entities. An expense-paid trip, or reimbursement for such a trip, is clearly income in the generic sense, and its receipt is clearly forbidden under the statute.

Similarly, Minnesota Rules 7845.0700, subpart 1 contains a broad prohibition against Commissioners seeking or accepting any “thing” of monetary value exceeding nominal value from utilities, telephone companies, or parties to Commission proceedings:

A commissioner or employee shall not directly or indirectly solicit or accept for the commissioner or employee, or for another person, any compensation, gift, gratuity, favor, entertainment, meal, beverage, loan, or other thing of monetary value from a public utility, telephone company, or party, that exceeds nominal value. This prohibition does not apply to:

A. books or printed materials that are relevant to the official responsibilities of the commission; or

B. an educational program devoted to improving the regulatory process or the administration of the commission that is open to other interested groups or state agencies under the same terms and conditions. Meals associated with the program must be paid for by a commissioner or employee who attends the program.

Minnesota Rules 7845.0700, subp. 1.

Here, some of the items Former Commissioner Scott received from Integra, or for which Integra reimbursed him, are listed: entertainment, meals, beverages. Receipt of these items was clearly prohibited, and it would be anomalous, to say the least, to find that the remaining items – lodging, air fare, car rental, ground transportation – were somehow permissible. The Commission concludes that they were not, and that the acceptance of these items, or of the \$706.23 in reimbursement for them, violated Minnesota Rules 7845.0700, subpart 1.

VII. Former Commissioner Scott’s Failure to Disclose His Employment Communications with Integra Violated Minnesota Rules 7845.0800, subp. 2.

Minnesota Rules 7845.0800, subp. 2 requires Commissioners to disclose in writing and within 48 hours, any communication with a party to a pending proceeding regarding past or future benefits or compensation:

A commissioner shall not communicate, directly or indirectly, with a party to a pending proceeding before the commission regarding past or future benefits or compensation to be received from that party. The commissioner shall disclose in writing to the commission any communication regarding past or future benefits or compensation within 48 hours after the communication is made. . . .

Former Commissioner Scott did not disclose his employment discussions with Integra in writing or within 48 hours of their occurrence. These employment discussions were direct communications with a party to pending proceedings regarding an employment opportunity, clearly a “benefit” as that word is commonly used and understood. Failure to disclose these discussions violated Minnesota Rules 7845.0800, subd. 2.

VIII. Former Commissioner Scott’s Conduct in Initiating and Conducting Employment Discussions with Integra Violated Minnesota Rules 7845.0300 and 7845.0400.

The Commission’s Code of Conduct is designed to preserve the integrity and independence of Commission decisionmaking and to promote public confidence in the objectivity of Commission decisions. Minnesota Rules 7845.0300. The Code includes both specific prohibitions and general requirements; those most relevant to this case are set forth below:

7845.0300 PURPOSE AND CONSTRUCTION.

The purpose of this code is to preserve the integrity and independence of commission decision making and to promote public confidence in the objectivity of commission decisions.

Commissioners and employees should maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. This code must be construed to secure these objectives in keeping with the quasi-judicial function of the commission.

* * * * *

7845.0400 CONFLICT OF INTEREST; IMPROPRIETY.

Subpart 1. **General Behavior.** A commissioner or employee shall respect and comply with the law and shall behave in a manner that promotes public confidence in the integrity and impartiality of the commission's decision making process.

Subp. 2. **Actions prohibited.** Commissioners and employees shall avoid any action that might result in or create a conflict of interest or the appearance of impropriety, including:

- A. using public office for private gain;
- B. giving preferential treatment to an interested person or entity;
- C. impeding the efficiency or economy of commission decision making;
- D. losing independence or impartiality of action;
- E. making a commission decision outside official channels; and
- F. affecting adversely the confidence of the public in the integrity of the commission.

The Commission finds that Former Commissioner Scott's conduct in initiating and conducting employment discussions with a party to proceedings before the Commission violated Minnesota Rules 7845.0300 and Minnesota Rules 7845.0400.

A. Using Public Office for Private Gain.

Former Commissioner Scott's initiation of employment discussions with Integra necessarily involved using public office for private gain, in violation of Minnesota Rules 7845.0400, subp. 2 A.

As a sitting Commissioner, Mr. Scott enjoyed special advantages not available to other job seekers. He had direct access to Integra's CEO, the presumed ability to affect the Company's treatment in the Minnesota regulatory process, and the presumed ability to influence other state and federal regulatory authorities.

His status as a utility regulator guaranteed that his employment inquiry would be treated with the utmost seriousness, whether it was welcome or unwelcome, and whatever its final disposition. It guaranteed that he would be treated with the utmost respect throughout the process. These were significant advantages that accrued to him only because of his public office.

B. Losing Independence or Impartiality of Action.

The Code also prohibits any action that might result in a Commissioner losing independence or impartiality of action.

Integra and/or its affiliate Scott-Rice were parties in their own names to approximately 10 Commission proceedings during the Company's employment discussions with Former Commissioner Scott. They also participated in many other proceedings as members of trade groups or coalitions.¹⁹ Former Commissioner Scott voted on at least one of these matters during that period.²⁰ No one has suggested that any matter decided during that time, involving those parties, carried any controversy.

Nevertheless, seeking and discussing employment with parties to pending proceedings can reasonably be viewed as compromising a Commissioner's independence and impartiality – few decision-makers can weigh the claims of a potential future employer with the same objectivity as the claims of parties with whom their futures are not linked. The Commission therefore finds that the employment discussions initiated by Former Commissioner Scott violated Minnesota Rules 7845.0400, subp. 2 D.

C. Adversely Affecting Public Confidence in the Commission's Integrity and Creating an Apparent Conflict Between Private Interests and Official Duties.

Former Commissioner Scott's conduct in initiating and conducting active employment discussions with a party to pending Commission proceedings created an apparent conflict between his private interests as a job-seeker and his official duties as a utility regulator.

Such conflicts of interest erode public confidence in the independence and integrity of the Commission.

The Commission therefore finds that the conduct of Former Commissioner Scott violated Minnesota Rules 7845.0400, subp. 2 F and Minnesota Rules 7845.0300.

¹⁹ Findings of Fact 61 through 61.6, Appendix.

²⁰ Finding of Fact 61.7, Appendix.

IX. The Commission Will Assess a \$2,500 Penalty Against Former Commissioner Scott and Will Refrain from Assessing a Penalty Against Integra.

Under Minn. Stat. § 216B.036, the Commission may assess a penalty of up to \$10,000 for each violation of the one-year ban on rate-regulated entities or their affiliates and former Commissioners entering into employment contracts.

The Commission finds that it would be inappropriate not to impose a penalty on Former Commissioner Scott. However confusing Minn. Stat. § 216A.036 may have appeared at the time, the statute did and does prohibit the employment discussions that he initiated. Former Commissioner Scott knew or should have known that his reading of the statute was not the only possible reading; he knew or should have known that the statute could be read to bar his employment by Integra. He could have chosen to err on the side of caution, especially given the ethical implications of his decision and the possibility that it could damage public confidence in the integrity of the Commission.

At the same time, there are factors in this case that clearly cut in favor of a penalty at the lower end of the range. Former Commissioner Scott acted on the basis of his own legal analysis, which apparently yielded the same conclusions as those of Integra's outside counsel. He did not attempt to flout Minn. Stat. § 216A.036. He has cooperated fully throughout this difficult investigation.

The Commission concludes that, while a meaningful penalty is necessary to vindicate the statute and to demonstrate that the Commission is serious about enforcing statutory standards of conduct, the penalty should be significantly below the statutory maximum. The Commission will set the penalty at \$2,500, believing that it falls within those parameters.

The Commission will not impose a penalty on Integra, for four reasons. First, Integra carefully followed the advice of counsel throughout its employment discussions with Former Commissioner Scott; it is hard to conceive of what else Integra could have done to avoid running afoul of Minn. Stat. § 216A.036. Second, Integra, like Former Commissioner Scott, has cooperated fully throughout the course of this investigation. Third, Integra was not responsible for maintaining the public trust in the same way and to the same degree as Former Commissioner Scott.

Fourth, and perhaps most importantly, Integra has already paid a substantial financial price for its violation of Minn. Stat. § 216A.036 – it has borne the costs of this proceeding in the form of regulatory assessments.²¹ The maximum statutory penalty of \$10,000 is nearly trivial in comparison with these costs, which will continue to mount and which the Company will continue to bear to the extent permissible by law. For all these reasons, the Commission will not impose a penalty on Integra under the provisions of Minn. Stat. § 216A.036.

Finally, the Commission notes that the Code of Conduct violations set forth above carry penalties that are inapplicable in this case, chiefly the dismissal of pleadings or proceedings and the recusal or dismissal of Commissioners.²² For these reasons, no penalties will be assessed under the Code of Conduct.

²¹ Minn. Stat. § 237.295.

²² Minnesota Rules 7845.1000; Minnesota Rules 7845.7500.

ORDER

1. The Commission hereby adopts the Findings of Fact set forth in the attached Appendix, except to the extent that any finding might be inconsistent with the Commission's vote or with the rationale of the majority.
2. The Commission finds that Scott-Rice Telephone Company, is an "entity subject to rate regulation by the commission" within the meaning of Minn. Stat. § 216A.036 (a), that Integra Telecom is an "affiliated company" of Scott-Rice within the meaning of Minn. Stat. § 216A.036 (c), and that Integra Telecom and Former Commissioner Greg Scott therefore violated the statute by the offer and acceptance of employment within one year of Former Commissioner Scott's leaving the Commission.
3. The Commission finds that Former Commissioner Scott's conduct in initiating, conducting, and failing to disclose employment negotiations with Integra while serving as a Commissioner violated the Commission's Code of Conduct, specifically Minnesota Rules 7845.0400 and 7845.0300, and that his failure to disclose these communications violated Minnesota Rules 7845.0800, subp. 2.
4. The Commission finds that Former Commissioner Scott's conduct in seeking \$706.23 in reimbursement for travel expenses from Integra violated Minnesota Rules 7845.0700, subp. 1 and that his acceptance of this reimbursement violated Minn. Stat. § 216A.035 (a).
5. The Commission hereby assesses a penalty of \$2,500 against Former Commissioner Scott under Minn. Stat. § 216A.036 (d) and requests enforcement as necessary from the Attorney General.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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FINDINGS OF FACT

Scott's Employment with the MPUC:

1. Gregory Scott's employment with the Commission began on August 29, 1997. Email from Dr. Haar.
2. Scott's employment with the Commission terminated effective at the end of the day on May 18, 2004. MPUC Response to Information Request No. 1 [Tab T]; Scott Resignation Letter dated May 11, 2004 [Scott Depo Exh 23] [Tab GG].

Scott's Communications with Integra:

3. The first communication between Scott and Dudley Slater, CEO of Integra occurred on April 8, 2004, at a "meet and greet" meeting requested by Integra and attended by Slater, Scott, Dan Lipschultz (an attorney with Moss & Barnett, P.A., Integra's outside regulatory counsel), Integra staff Chris Hickman, Bill Weiman of Integra the ILEC (Scott-Rice), and Commission Staff Analyst Kevin O'Grady. Integra's Response to Info. Req. No. 1 [Tab W, Exh A]; Slater Depo Exh 4 [Tab HH]. Former Commissioner Scott's Electronic Calendar for April 8, 2004 contains no meeting with Integra. Former Commissioner Scott's timesheet has no time allocated to a meeting. [Tab T]
4. Scott called Slater on April 13, 2004, "to see if there were any open employment positions with Integra." Integra's Response to Info Req. No. 1 [Tab W, Exh. A]; Scott Depo Exh 4 [Tab GG]. Scott said that "I enjoyed meeting [Slater] and that I wanted him to know that if there was ever a chance for us to work together, I'd be interested in doing that." Scott Depo at 60. Scott told Slater that Scott was willing to resign from the Commission prior to conclusion of his term at the end of the year, for the "right opportunity." Scott Depo at 62. On that date, Scott was aware that Integra the CLEC and/or Integra the ILEC (Scott-Rice) were either parties to or participants in proceedings before the Commission. Scott Depo TR: 30:25, 31:1-6 [Tab GG]. Scott "spent a few days looking at the law to make sure calling [Slater] wouldn't get me in trouble with the law and wouldn't get [Slater] and Integra in trouble, so I spent some time looking at the various statutes and rules." Scott Depo TR: 52:15-25, 53:1-23 [Tab GG]. Scott initiated the employment discussion, not Integra. Scott Depo TR: 78:6-15 [Tab GG]. Slater was "absolutely surprised to receive the call." Slater neither solicited the call nor did he expect it. Slater Depo TR: 53:2-20, 54:7-17 [Tab HH].
5. Scott emailed his resume to Slater on April 13, 2004. Scott Depo Exhs 4 & 13 [Tab GG].
6. On April 15, 2004, Scott, as a member of the Commission, voted on a matter, Docket No. P-999/CI-03-961, to which Integra was a party. Slater Depo Exh 32 [Tab GG].
7. Scott e-mailed his schedule to Slater on April 16, 2004. Scott Depo Exhs 4 & 14 [Tab GG].

8. Later on April 16, 2004, Slater called Scott in response to his email. Scott and Slater had a 14.3 minute phone conversation on April 16, 2004. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Tab AA]:

This was a strategic discussion about the future of Integra, how the Company planned to manage regulatory affairs and whether a potential role for Scott would fit with such future plans. Scott advised Slater that his term as a Commissioner was coming to an end and that he would consider resigning from his role prior to the scheduled end of its term. We agreed that it made sense to have Scott come to Portland to discuss whether there might be a complimentary fit, and to meet the Company's key leadership. Slater Depo Exh 4 [Tab HH].

Scott advised Slater via email that he would be in Denver April 18-20. Scott Depo. Exhs 4 & 14 [Tab GG]. Slater felt that he was, on April 16, 2004, free to discuss with Scott the following subjects: (1) Integra's future; (2) how Integra planned to manage regulatory affairs; and (3) whether a potential role for Scott would fit in with such future plans. Slater Depo TR: 60:14-24 [Tab HH]. Scott said that he discussed the above topics to find out whether Scott's resume, background, experience and skills "fit with what Integra was looking for." Scott Depo at 66-67. Scott Depo. at 66. Slater invited Scott to come to Portland. Slater Depo. at 61-62. Scott expected Integra to pay for his trip to Portland. Scott Depo. at 73-74.

9. On April 17, 2004, Scott emailed his flight schedule and hotel arrangements to Slater regarding a May 4 interview at Integra's Portland, Oregon headquarters. Scott Depo. Exhs. 4 & 15 [Tab GG]. Scott wrote to Slater that renting a car might be more expensive than taking a shuttle, for instance, but said that the decision as to which form of ground transportation Scott should use was up to Slater: "I leave that to you. Just let me know." Scott Depo. Exh. 17 [Tab GG].

10. On April 19, 2004, Slater emailed Scott regarding Scott's schedule and plans for the May 4 interview in Oregon. Scott Depo Exhs 4 & 16 [Tab GG]. Slater suggested Scott rent a car to allow greater flexibility to see the area. Slater Depo. Exh. 16 [Tab GG].

11. On April 21, 2004, the Commission issued its written Order Resuming Evidentiary Proceeding in Docket P-999/CI-03-961. A proceeding to which Integra was a party.

12. On April 30, 2004, Scott and Slater exchanged emails regarding Scott's May 4 trip to Oregon. Scott Depo Exhs 4 & 17 [Tab GG].

13. On May 1, 2004, Scott and Slater exchanged emails regarding directions to Integra's office. Scott Depo Exh 4 [Tab GG].

14. On May 3, 2004, Integra composed and sent an email to affected Integra personnel setting forth ground rules and limitations governing the conduct of the upcoming Scott interviews. Slater Depo Exhs 4 & 18 [Tab HH].

15. On May 4, 2004, Integra vetted the May 3, 2004, email (Finding No. 14, above) with Lindquist & Vennum at 9:30 a.m., P.D.T., before commencement of the Scott interviews. Slater Depo Exh 4 [Tab HH].

16. On July 7, 2004, Slater left a voice mail message for Chairman Koppendrayner in which he said: "..... we obtained [Sasseville's May 4, 2004, opinion letter] prior to any dialog [between Integra and Scott]." Slater Depo Exh 29 [Tab HH] (emphasis added). Slater met with Scott on April 8, talked on the phone with Scott on April 13 and 16, and exchanged emails with Scott on April 13, 16, 17, 19, 30 and May 1. Slater Depo TR: 10:3-19 [Tab HH].

17. Sasseville's May 4, 2004, letter [Tab H] states in part as follows (at page 2): "The proposed employment interview of a sitting PUC Commissioner implicates several Minnesota statutes and administrative rules."

18. On May 4, 2004, Scott interviewed Integra's key leadership at Integra's Portland, Oregon offices from 11:30 a.m. to 5:00 p.m. Slater Depo Exh 4 [Tab HH]. The Portland visit was Slater's idea. Scott Depo TR: 72:13-17 [Tab GG]; Slater Depo TR: 64:17-18 [Tab HH]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004:

These discussions focused on the future of the Company, how it planned to manage regulatory affairs, including resource/personnel needs, potential scope of work and the experience and qualifications of Scott in the context of these personnel needs.

19. On May 6, 2004, Scott and Slater exchanged emails regarding an itemization and reimbursement of Scott's interview expenses (\$706.23). Scott Depo Exh 20 [Tab GG]. The expenses included expenses for airfare, lodging, meals, a rental car as well as gasoline used to drive to Vancouver, Washington, and parking at the Minneapolis/St. Paul airport. Id. On May 6, 2004, Integra issued Check No. 170722, in the amount of \$706.23, to Scott. "GL Acct 5012" [General Ledger Account] is "Recruiting;" Department 092 is "Administration: Human Resources."

20. On May 7, 2004, Scott and Slater spoke twice on the phone, once for one-half minute and once for 29.3 minutes. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Tab AA]:

Dudley does not recall the first phone call. The second phone call was a follow up to his conversations with people at Integra about their interests in Mr. Scott and further steps to be taken. There was a general discussion of "cultural issues" meaning discussion of Integra's philosophy and how it worked. There was a discussion of how Greg Scott felt about Integra's team orientation and his belief that he could fit in well and could provide assistance. Greg recalls that a fair amount of time was [spent] discussing what it was like living in Portland, specifically, and in Oregon generally. He spoke about this topic with each person with whom he interviewed.

21. On May 9, 2004, Scott advised Slater of his plan to resign from the MPUC on May 10, 2004, most likely effective at the end of the day on Friday, May 14, 2004. Scott Depo Exhs 4 & 21 [Tab GG].

22. Integra believes that Scott notified the MPUC of his resignation on May 10, 2004. Slater Depo Exh 4 [Tab HH]. Scott's resignation letter to Governor Pawlenty is dated May 11, 2004, effective at the end of the day on May 18, 2004. Scott Depo Exh 23 [Tab GG]. The resignation letter is composed of only two sentences, "Please accept my resignation from the Public Utilities Commission effective at the end of the day on May 18, 2004. Thank you." On May 10, 2004, Scott gave oral notice of his resignation to Dr. Haar and Chairman Koppendrayar. Scott maintains that he "had never hidden the fact I was talking to Integra. I mean it was generally known throughout the Commission that I was talking to Integra." Scott Depo TR:109:17-25, 110:1-25, 111:1-25, 112:1-15, 115:1-25, 116:1-11 [Tab GG]. Scott never notified the Commission that he was discussing future employment with Integra. Moreover, in response to information request number 4 to the Commission, Dr. Haar states, "It appears that no one at the Commission knew of his plans to work for Integra until very close to his last day on the job." [Tab T].

23. On May 11, 2004, Lisa Hillyer (Integra's Vice President for Human Resources) emailed Slater about a "Draft of Offer Letter," stating: "I inserted various data points (i.e. hire date, base salary) and will plan to modify, as needed, based upon your discussions with Greg." Slater Depo Exhs 4 & 24 [Tab HH].

24. On May 11, 2004, Scott met for one hour with Carol Wirsbinski, who is responsible for Integra's Minnesota operations. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004 [Scott Depo Exh 4] [Tab GG]:

This discussion was an extension of the May 4th interviews. As head of Minnesota and North Dakota operations, Carol was interested in how Greg would determine which pieces of regulatory information which crossed his desk would be important to her as a business operator. He let her know he would decipher the important from the unimportant and only bring the key issues to her attention. Carol also questioned his commitment to an Oregon move in light of his family connection to Minnesota and learned that Greg's wife was a gardener. Previous travel had led her to express a desire to be located in the Pacific Northwest.

25. On May 12, 2004, Deborah Harwood provided Slater with a memorandum regarding the separation of legal and regulatory functions that will be transferred to Greg Scott, based on their conversation the previous day. Scott Depo. Exh. 25 [Tab GG]. The memorandum was faxed to Scott on May 17, 2004.

26. On May 12, 2004, Scott and Slater spoke twice via cell phone, each call lasting two minutes. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "Mr. Slater does not recall what was discussed during these discussions, but presumes they were follow up to Greg Scott's meeting with Carol Wirsbinski."

27. On May 13, 2004, Slater emailed Hillyer regarding the "draft of offer letter" of employment for Scott, stating: "Thanks. I do not plan to provide him a draft until after his final day as a Commissioner on May 18." Slater Depo Exhs 4 & 24 [Tab HH].

28. On May 17, 2004, Slater faxed to Scott the memorandum prepared by Harwood, see Finding 25, regarding "Transfer of All Regulatory Activity to Greg Scott." Slater Depo Exh 25 [Tab HH]. The fax transmittal sheet's subject reference is "Scope of job." The memo contains a "list of regulatory functions which will be assumed by Greg Scott and his department."
29. On May 17, 2004, Scott and Slater spoke for five minutes on the phone. Scott Depo Exh 4 [Tab GG]. According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "In this conversation Slater was informed by Scott that Scott's term as a Commissioner would officially end on May 18th (at the adjournment of that day's Commission meeting)." Slater Depo TR: 94-95:14-18 [Tab HH]. Scott agreed to accept the responsibilities articulated in the Harwood memorandum referenced in Findings 25 and 28. Slater Depo. at 100-101 [Tab HH].
30. May 18, 2004: the effective date, at the end of the day, of Scott's resignation from the MPUC. Scott Depo Exh 23 [Tab GG]. Commission response to information request #2 indicates that Scott was compensated as a Commission employee through May 18, 2004. Scott's timesheet for May 18, 2004 shows 8 hours on that date. [Tab T]
31. On May 18, 2004, Scott and Slater spoke for 20.7 minutes on the phone, discussing prospective compensation terms. Scott Depo Exh 4 [Tab GG]; Integra's Response to Info. Req. No. 4. This call was made from Slater to Scott at his office phone at the Commission. [Tab W] According to Integra's Supplemental Response to Information Requests (Exhibit A), dated December 30, 2004: "In this conversation Slater confirmed that Scott's resignation was effective and then Scott and Slater discussed terms of compensation." Scott and Slater agreed to all terms of employment. Slater Depo. at 104 [Tab HH]. Both Scott and Slater maintain that Scott's Integra compensation was not discussed prior to May 18, 2004. Scott Depo TR: 126:22-25, 127:1-4 [Tab GG]; Slater Depo TR: 95:2-25 [Tab HH].
32. On May 19, 2004, Slater sent a memo to Hillyer regarding the drafting of the Scott offer of employment letter. Slater Depo Exhs 4 & 27 [Tab HH].
33. On May 21, 2004, Slater faxed Integra's employment offer to Scott. Integra's Response to Info. Req. No. 5 [Tab W]; Scott Depo. Exh. 24 [Tab GG]; Slater Depo Exh 24 [Tab HH].
34. Slater testified that he and Scott negotiated the terms of Scott's employment agreement between May 18 and 20, 2004, and that the terms and conditions thereof were not discussed before May 18. Slater Depo TR: 94:3-25, 95:1-25, 96:1-6 [Tab HH].
35. On May 21, 2004, Scott accepted Integra's written employment offer. Integra's Response to Info. Req. No. 6 [Tab W]; Scott Depo Exh 24 [Tab GG].
36. Scott spoke to a committee of the Minnesota State Bar Association on June 2, 2004, at which time he announced that he was taking a job with Integra. MPUC's Supplemental Responses to Information Requests [Former Commissioner Scott's Electronic Calendar for Wednesday, June 2, 2004] [Tab T]; Scott Depo TR: 11:12-25, 12:1-25 [Tab GG].

37. On June 16, 2004, Scott commenced his employment with Integra as Vice President of Regulatory Affairs. Integra's Response to Info. Req. No. 7 [Tab W]; Scott Depo Exh 4 [Tab GG].

38. Integra and Scott both maintain that, during the period April 8, 2004, to May 18, 2004:

38.1 Scott did not accept employment with Integra;

38.2 Scott did not receive compensation directly or indirectly from Integra;

38.3 Scott did not enter into a contractual relationship with Integra; and

38.4 Integra did not negotiate or offer to employ or compensate Scott.

Integra's Response to Info. Req. No. 4 [Tab W]; Scott Depo TR: 13:18-22 [Tab GG]; Slater Depo TR: 95:2-25 [Tab HH].

39. Beginning on May 18, 2004, and within one year thereof:

39.1 Integra negotiated with and offered to employ and compensate Scott; and

39.2 Scott accepted and began employment with Integra.

Slater Depo Exh 4 [Tab HH]. While the record strongly suggests that general employment discussions began as early as April 13, 2004, and became progressively more specific, there is no independently available and verifiable evidence to indicate that detailed employment negotiations -- that included discussion of salary -- began earlier than May 18, 2004.

40. Information Request No. 13 to Integra [Tab R] asks:

Has Scott provided Integra, either formally or informally, with any advice, opinion, or input on any matter that was before the Commission while he was a member of the Commission in the twelve months preceding his departure from the Commission or since he left the Commission?

Integra's response [Tab W] states:

Integra believed and continues to believe that it complied with all Minnesota Statutes in hiring Scott; however, upon learning of a potential investigation by the MPUC, as a show of good faith, Integra created an Ethical Wall August 6, 2004 whereby all regulatory matters for the State of Minnesota (CLEC and SRT) are to be managed and directed by our General Counsel/Vice President, rather than by Mr. Scott. Mr. Scott has not participated in or provided any advice, opinion or input to Integra or SRT regarding Minnesota regulatory matters since the ethical wall was established. Prior to the implementation of the Ethical Wall, Mr. Scott does not remember any substantive interaction with SRT. Mr. Scott may have received copies of some generally distributed emails notices from SRT.

41. Information Request No. 14 to Integra [Tab R] states:

Provide a list of utility regulatory issues that Scott has been involved in since he became employed by Integra.

Integra's response [Tab W] states:

Mr. Scott has not been involved in any Minnesota regulatory matters as described in Answer to question 12 [sic]. Mr. Scott is handling the regulatory matters for Integra for the states of Oregon, Washington, Utah and the Federal Communications Commission. The substantial majority of the work that Greg Scott has performed for Integra Telecom has been to direct and manage the Company's participation in FCC Docket No. 04-313 and Docket No. 01-338, relating to the development of final rules for unbundling network elements under Section 251 of the 96 Telecom Act. Additionally, Greg Scott has worked to build relationships with other industry participants and state regulatory and legislative personnel.

Legal Opinion Letters:

42. On April 26, 2004, Integra engaged Sasseville to provide a legal opinion regarding Scott's inquiry into employment opportunities at Integra. Slater Depo Exh 4 [Tab HH]; Tab G, Para. 2.

43. Between April 28 and May 4, 2004, Harwood and Sasseville communicated by telephone and email, exchanging factual and legal information regarding Sasseville's opinion letter. Slater Depo Exh 4 [Tab HH].

44. On May 3, 2004, Integra received Sasseville's preliminary draft opinion, advising Integra that Minnesota Statutes, Section 216A.036, did not apply to either Integra or Scott-Rice. (The draft opinion was not produced during this investigation.) Responding to the draft, Integra informed Sasseville that Integra was indirectly involved in two matters involving the Commission: (1) a proceeding in which the MTA was a party (Scott-Rice is a MTA member); and (2) the unbundled network element "appeal" in federal court. After considering those matters, and after revisiting the statute and rules, Sasseville advised Integra on May 3 that his opinion was not affected by the two matters. Slater Depo Exh 4 [Tab HH].

45. On May 3, 2004, Integra composed and distributed an email to affected Integra personnel, describing ground rules and limitations for the Scott interviews to be held on May 4. Slater Depo Exh 4 [Tab HH].

46. On May 4, 2004, at 9:30 a.m., P.D.T., before commencement of the Scott interviews in Portland, Integra vetted the May 3 email with Lindquist. Slater Depo Exh 4 [Tab HH]. Sasseville's opinion letter is dated May 4, 2004. Slater Depo Exh 31 [Tab HH].

47. On September 14, 2004, Kenneth E. Raschke Jr., Assistant Attorney General, wrote to Chairman Koppendrayner regarding the application of Minnesota Statutes, Section 216A.036, to this matter. Tab M.

48. On October 13, 2004, Sasseville wrote to Drawz, further developing his thesis set forth in his May 4, 2004, letter to Integra that Integra and Scott-Rice are not "subject to rate regulation by the Commission." Tab S.
49. On November 17, 2004, Raschke wrote to Commissioner Ludeman, further expanding on his September 14, 2004, letter and concluding that, "The enumeration of 'price regulated services' and the procedures by which the PUC may establish rates certainly can be construed as rate regulation." Tab X. Raschke also noted that a small telephone company that elects AFOR is not subject to the rate-of-return regulations or earnings investigation provisions of Sections 237.075 or 237.081 (citing Section 237.773, subd.2).
50. On December 29, 2004, Sasseville wrote to Drawz in response to Raschke's November 17, 2004, letter. Tab V.
51. On December 30, 2004, Integra submitted a supplemental response to the October 13, 2004, Information Requests. See Tab Z.
52. On December 31, 2004, Integra submitted a slightly revised supplemental response to the October 13, 2004, Information Requests. See Tab AA.
53. On January 7, 2005, Mr. Kohnstamm wrote to Commissioner Ludeman, addressing several points in Mr. Sasseville's December 29, 2004, letter. See Tab BB.
54. On March 24, 2005, Ms. Anderson wrote to Drawz, enclosing the Department's "preliminary legal analysis of 'rate regulation' under Chapters 237 and 216A." See Tab FF.
55. On May 13, 2005, Sasseville wrote to Drawz in response to Anderson's March 24, 2005, letter. See Tab JJ.

Other:

56. As to CLEC operations, Integra is a "telecommunications carrier." Minnesota Statutes, Section 237.74, subd. 6, applies to its CLEC operations.
57. Scott-Rice Telephone Company ("Scott-Rice"), an affiliated company of Integra, is an "independent telephone company." As of August 30, 2004, Scott-Rice had 21,684 access lines in Minnesota. Sasseville Letter [May 4, 2004] at pages 1 and 2 [Tab H]; Sasseville Letter [October 13, 2004] at page 1 [Tab S]; Minnesota Statutes, Section 237.01, subd. 3; Scott Depo TR: 28:5-16 [Tab GG].
58. As a "small telephone company" Scott-Rice elected to be regulated under the alternative form of regulation (AFOR), pursuant to Minnesota Statutes, Section 237.773, subd. 2. Sasseville Letter [October 13, 2004] at page 2 [Tab S]; MPUC Docket No. P426/AR-98-619. The Commission is authorized to change the rates of companies operating pursuant to an AFOR under specified circumstances.

59. Scott-Rice is a member of the Minnesota Independent Coalition ("MIC"), a group of more than 80 independent local telephone companies that participate collectively in various Commission proceedings that have the potential to affect the interests of small rural telephone companies. The MIC is or has been a party to over 40 Commission proceedings pending at some time between May 2003 and October 2004. Integra's Response to Info. Req. No. 24, Exh. E [Tab W].

60. Integra was, at all times relevant hereto, a member of the Minnesota Telecommunications Alliance (A/k/a the Minnesota Telephone Association). Scott Depo Exh 9 [Tab GG].

61. Integra and Scott-Rice were parties to and participants in various Commission proceedings:

61.1 Slater Depo Exh 7 is a list of proceedings compiled by DOC and is entitled: "Integra and/or Scott-Rice were parties to the following proceedings which were open during Greg Scott's employment negotiations with Integra."

61.2 Slater Depo Exh 8 is a list provided by Dr. Haar, the major headers of which are entitled: "Dockets where Integra (the CLEC) was/is a party;" "Policy Dockets Integra (the CLEC) Participated [in] as a Party;" "Policy Dockets Integra (the CLEC) Participated [in] as a Part of the CLEC Coalition;" "Dockets Where Integra (the ILEC) was a Party;" "Dockets Where Integra (the ILEC) as a Member of the Minnesota Independent Coalition, Was/Is a Party."

61.3 Slater Depo Exh 9 is a May 6, 2004, letter to Dr. Haar from Richard J. Johnson, Moss & Barnett, to which is attached Exhibit 1, entitled, "Minnesota Telephone Association Active Member ILECs." Integra Telecom is listed as a member.

61.4 Slater Depo Exh 10 is the Commission's April 21, 2004, "Order Resuming Evidentiary Proceeding" in Docket No. P999/CI-03-961. Integra Telecom of Minnesota, Inc., is listed on page 3 thereof as a party.

61.5 Slater Depo Exh 11 is an April 28, 2004, letter to Administrative Law Judges Mihalchick and Sheehy from Dan Lipschultz, Moss & Barnett, transmitting a Petition to Withdraw on behalf of Integra Telecom of Minnesota, Inc., in Docket No. P-999/CI-03-961.

61.6 Slater Depo Exh 12 is Integra Telecom's Responses to the Information Requests [see Tab W]. Information Request 24 states as follows:

In what proceedings pending before the Commission, now or during the twelve months ending with Scott's resignation from the Commission, is or has Integra or any of its affiliates been a party? Provide the docket number and the date the proceeding was opened (or closed, if completed).

Integra's Answer: "See Attached Exhibit E." Exhibit E is included in Slater Depo Exh 12. Integra's response identifies several cases in which Integra the CLEC as well as Integra the ILEC were parties to matters pending before the Commission during the time period of April 13, 2004 through May 18, 2004.

61.7 Scott was present and voted on telecommunications agenda items at the Commission's April 15, 2004, meeting, including a matter to which Integra was a party, Docket No. P-999/CI-03-961. Slater Depo Exh 32 [Tab HH].